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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re

WILLIAM SHAWN STURGES,

On Habeas Corpus.

F072939

(Tuolumne Super. Ct. Nos. CRF34899S
& CRW47099)

OPINION

THE COURT*

ORIGINAL PROCEEDING; petition for writ of habeas corpus.

William Shawn Sturges, in pro. per., for Petitioner.

Kamala D. Harris, Attorney General, Michael P. Farrell, Assistant Attorney
General, Brian G. Smiley and Max Feinstat, Deputy Attorneys General, for Respondent.

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In a petition for writ of habeas corpus filed on December 31, 2015, William Shawn Sturges (petitioner) seeks permission to file a belated appeal. We grant petitioner's request based on his filing of a petition for writ of habeas corpus challenging his sentence within the jurisdictional period to appeal.

* Before Levy, A.P.J., Kane, J., and Detjen, J.

FACTUAL BACKGROUND

On March 9, 2015, petitioner pled guilty to second degree robbery with the personal use of a firearm before the Tuolumne County Superior Court. (Pen. Code, §§ 211, 12023.53, subd. (b).¹) The trial court immediately sentenced petitioner to an 11-year sentence based on one-third of the three-year mid-term plus 10 years for the firearm enhancement.

Fifty-eight days later, on May 6, 2015, petitioner filed with the superior court a petition for writ of habeas corpus challenging the length of his sentence. Petitioner contended the court erroneously imposed a full 10-year firearm enhancement instead of taking one-third of it as a consecutive sentence. (§ 1170.1, subd. (a).) The trial court denied the habeas petition on June 24, 2015.

Petitioner subsequently filed an untimely notice of appeal on August 13, 2015. The trial court did not process the appeal filed 157 days after sentencing.

On December 31, 2015, petitioner filed with this court a petition for writ of habeas corpus and an accompanying request to file a notice of appeal under the constructive filing doctrine. Because petitioner seeks the same relief in both documents, this court will treat them collectively as a single habeas petition.

Petitioner declares under penalty of perjury that upon discovering that the trial court may have miscalculated his sentence, he did not have sufficient time or resources to locate a notice of appeal form and instead filed his petition for writ of habeas corpus with the superior court. Petitioner further explains that he wishes to raise the same sentencing issue on appeal that he raised in his habeas petition.

The Attorney General filed an informal response to the petition on April 1, 2016, explaining that her office “does not oppose the instant petition to the extent petitioner seeks to file a belated notice of appeal.”

¹ Further statutory references are to the Penal Code unless otherwise stated.

DISCUSSION

A notice of appeal must be filed within 60 days of the judgment or order being appealed to confer appellate jurisdiction on this court. (Cal. Rules of Court, rule 8.308(a).) An appealable judgment in a criminal case is generally rendered at the time of sentencing. (§ 1237, subd. (a).) Based on petitioner's March 9, 2015, sentencing date, petitioner was required to file a notice of appeal in the trial court no later than May 8, 2015.

Although petitioner did not file a timely notice of appeal, he did file a habeas petition challenging the length of his sentence two days before the end of the jurisdictional period for an appeal. Based on our obligation to liberally construe an appellant's desire to file an appeal (Cal. Rule of Court, rule 8.100(a)(2)), this court deems petitioner's May 6, 2015, habeas petition an adequate and timely notice of appeal.

DISPOSITION

Let a writ of habeas corpus issue directing the Clerk of the Tuolumne County Superior Court to construe William S. Sturge's "Petition for Writ of Habeas Corpus," filed on May 6, 2015, in case No. CRW47099, as a valid and timely notice of appeal challenging the sentence entered on March 9, 2015, in case No. CRF34899S. (Cal. Rules of Court, rule 8.304(b)(4)(B).) The superior court shall process the petition as a notice of appeal and direct the preparation of the record on appeal in accordance with the applicable California Rules of Court.